

DEPARTMENT OF STATE REVENUE

02960611.LOF

LETTER OF FINDINGS NUMBER: 96-0611

Income Tax

For The Period: 1992 - 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration - Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the proposed assessment of a negligence penalty.

STATEMENT OF FACTS

The taxpayer is a manufacturer and distributor of cold formed parts and industrial products for fastening and related applications. Taxpayer stores products manufactured by others in two warehouses in Indiana. The former Tax Manager of the taxpayer resigned on November 3, 1995. It was discovered after his departure that he had failed to file numerous 1994 state and city returns.

The Director of Internal Audit of the taxpayer's the parent company, gathered apportionment data and completed approximately thirty (30) state and ten (10) local 1994 returns. The taxpayer notified the Department by letter, on November 9, 1995, of its situation. The Indiana return was completed on December 7, 1995. The Director of Internal Audit was unfamiliar with the taxpayer and had a limited tax background. The Director erroneously excluded manufacturing sales in the return, causing the taxpayer to owe an additional amount on its 1994 return. The taxpayer also protests the penalty owed for the tax year 1992.

I. Tax Administration - Penalty

DISCUSSION

Indiana Code 6-8.1-10-2.1 states, in part, that if "the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty." Regulation 45 IAC 15-11-2 also states,

"(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

The Department finds that by bringing in the Director of Internal Audit and by notifying the Department of its situation, the taxpayer took reasonable proactive steps to rectify the matter. The Department finds that the taxpayer has shown reasonable cause for the tax deficiency.

FINDING

The taxpayer's protest is sustained.